



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

The Life of Sir James Fitzjames Stephen, Bart., K.C.S.I., a Judge of the High Court of Justice. By his Brother, LESLIE STEPHEN. With two Portraits. (London and New York: G. P. Putman's Sons. 1895. Pp. 504.)

ALL those who knew Fitzjames Stephen and his books will find a melancholy pleasure in this capital biography. It gives his ancestry, interesting in itself, and valuable in showing the hereditary traits that characterized the man and his methods of thought and work. It shows him in his Cambridge days, when his associates and contemporaries predicted a future of even more distinction than that he achieved by a lifetime of conscientious work and study. At college, just as later at the Bar and on the Bench, he fell short of attaining the highest honors, but this was largely due to the fact that he worked for work's sake, rather than for reward. What he was in his youth, he remained to the end, earnest, zealous, aiming at the best, tireless in the pursuit of good to others. He came of a sturdy Scotch stock, full of zeal and energy, never directed to selfish ends, and often failing in achievement. His grandfather, "Master" Stephen, made a mark first as a political partisan, but later as one of Wilberforce's most trusted supporters in the contest against slavery. His father, the "King" James of contemporary memoirs, was long an official in the Colonial Department, and gradually rose to such a position of power and authority that he was recognized as the controlling influence under a succession of political chiefs. His Ecclesiastical Essays and his Lectures on French History make up his literary baggage, valuable, yet small in proportion to his wide and deep studies and the appreciation in which he was held by able men. His wife, Fitzjames' mother, was a daughter of the Rev. John Venn of Clapham, a leader of what has often been called in derision the "Clapham sect," the strict evangelicals, of whom the Stephens, the Wilberforces, and the Macaulays were perhaps the most noted members. From his mother and from the Venns, a long line of clergymen of the same theological views from the days of Queen Elizabeth to those of Queen Victoria, Sir J. F. Stephen inherited a large share of the qualities that distinguished him. It was characteristic of the stock from which he descended that his theological opinions were independent of any mere authority, the results of his own sturdy logical processes, and reasoned out for himself. As a young man he associated with his father's friends, among them such men as Sir Henry Taylor, James Spedding, Aubrey de Vere, John Austin, John Mill, and this association did more for him than Cambridge or the Inns of Court. Eton, King's College, London, and Trinity College, Cambridge, were the successive stages of his education, but he was too independent to follow beaten paths, and therefore never achieved great honors. As one of the "apostles," the accepted nickname for a Cambridge debating society, he became an associate of Sir Henry Sumner Maine, Lord Derby, Sir William Vernon Harcourt, Julian Fane, and Canon Holland. Although his father and his uncles, the Venns,

hoped that he would become a clergyman, his own sound sense discerned his greater fitness for the Bar, and after the usual studies, he was called in 1854. He had several years earlier begun to write for the newspapers and periodicals, and for years he was a frequent and valued contributor to the *Saturday Review*. The three volumes of his *Hora Sabbatica* show him at his best in the work in which he delighted, although he himself said later on in life that he had indulged too freely in the luxury of writing for the press. He wrote abundantly and vigorously, and was an ardent advocate of law reform, at first on the lines laid down by Bentham, but later in the direction of his own method of codification of the law, to which he gave the impetus in India, and for the promotion of which he vainly sought a seat in Parliament. It was as secretary of the royal commission of 1858 on popular education that he made his impression on the noteworthy men under and with whom he worked, and his reward was his appointment as Recorder of Newark, the first round on the judicial ladder up which he slowly climbed to the top. He was never successful at the Bar, so far as winning a great and lucrative practice, but he impressed judges and lawyers by his learning and ability, and won the esteem and confidence of solicitors and clients by his honesty and straightforwardness. His contributions to legal literature, other than occasional essays in reviews and magazines, began in 1863 with his *General View of the Criminal Law of England*, and this was followed by his *Digest of the Law of Evidence*, and that of *the Criminal Law*, and a *History of the Criminal Law of England*. But useful and successful as these have been as law books, he never became a great legal author. He followed at the outset Bentham and Austin, and was slow at first to recognize the great value of the historical methods first applied by Maine to the science of law; yet the labor expended on his articles in the *Pall Mall* and other periodicals would have made him a sound historical lawyer, and thus completed the equipment he needed for the work so well done by Maine and his school. In 1869 he succeeded Maine in the position once filled by Macaulay, as legal member of the Council in India, and, remaining there until 1872, he carried forward the work inaugurated by Maine, giving to India a series of codes in the shape of well-prepared statutes, far beyond the Penal Code prepared by Macaulay in 1834. Stephen's work in India has been the subject of much adverse criticism, and much of it has been recast by his able successors from time to time. It was rather by his success in bringing home to the minds of the vast population of India that it was governed by laws securing absolute justice to every man, than by technical merit, that Stephen made his mark as a law reformer in India. His return to England brought him back to the scenes of his earlier training and work, fitted by his hard work in India to undertake and cope with great tasks in government, in legislation, and in the administration of law, the one department that he always upheld as the best and most honorable in Great Britain. His book *Liberty, Equality, and Fraternity*, published in 1873, the first fruits of his enforced leisure

while he was preparing to resume his practice at the Bar, was a profound discussion of first principles of ethics, an open dissent from Mill, an avowed departure from his earlier allegiance to Bentham and the utilitarian school, and largely influenced by the lesson he had learned in India of the value of a strong and powerful government. Then came another unsuccessful effort to gain a seat in Parliament, and more plans for books and more efforts to secure some measure of codification of English law. In the preparation of bills of this kind he gathered the material which went to the making of his later law books; and by his persistent effort to gain a hearing for the cause he had so much at heart he enlisted the sympathy of his co-workers, won the respect of even his opponents, and at last enjoyed the reward of a high judicial position from the men who governed England, while his appointment was heartily approved alike by Bench and Bar, and by all of the public for whose good opinion he had any respect. It was during this waiting period that he became a member of that curious body called the Metaphysical Club, whose discussions led him to the preparation of papers printed in *Fraser's* and the *Contemporary* and the *Nineteenth Century*, where he met in open literary warfare Manning and Ward and Gladstone, showing concentrated vigor, strong power of reasoning, and real grasp of the difficult problems at issue. His real and his best work was done in the preparation of a penal code, on which he expended great labor, enlisted strong support, secured a royal commission, only to see his labor and its results finally swallowed up in the general vortex of a change of government, with which vanished his last hope of being able to secure the codifying of any part of English law.

With Froude and Carlyle, with the Stracheys and with Lord Lytton, Stephen was on terms of close intimacy, — indeed his friendship with Lord Lytton was almost romantic in its growth, from an interchange of views just as Lytton was going out to India, to the most exhaustive correspondence on all subjects of contemporary interest, — with the most marked results on their political faith.

From 1875 until he became a judge in 1879, Stephen was Professor of Common Law at the Inns of Court. His lectures on evidence naturally led him to the preparation of a text-book, his *Digest of the English Law of Evidence*, in which he “boiled down” his material to a size that made the book useful alike to student and practitioner. It was but another of his efforts to show that the law was capable of being taught on a foundation of reason and common sense and made a beautiful and instructive branch of science. He endeavored to show the possibility of codifying as a private enterprise; he suggested the formation of a council of legal literature, to co-operate with the councils for law reporting and legal education; he called attention to the utility of a translation of the year-books, the first sources of the legal antiquary, and the continued publishing of the State Trials, — both now steadily going forward; and urged a collection of the laws of the British Empire. All this time he was in growing practice in complicated and involved cases, — requiring great and close application

of even his strong reasoning powers, yet he found or made opportunity to rewrite and recast his *History of the Criminal Law*, in which he put to practical use the historical methods of Maine and his school, to which Stephen came at last. The growth of the criminal law is closely connected with the development of the moral sense of the community, with all the great political and social revolutions, and with the changes of the ecclesiastical constitution and the religious belief of the nation. Almost unconsciously at first, but at last with a full recognition of the change, he had left the school of Bentham and Austin, and his *History of the Criminal Law* was complementary to the great constitutional histories of Hallam and Stubbs. He frankly acknowledged his obligations to them, but he made special investigations in his own field and produced a history of interest and value as bringing out certain correlative processes in the legal development of English institutions which constitutional histories naturally left in the background. He won the acknowledgment of very competent judges for his thorough mastery of the antiquities of the law, and yet it was a task not at all congenial to his love of general principles. Stephen's *History*, Sir Frederick Pollock said, is the most extensive and arduous work undertaken by any English lawyer since the days of Blackstone, including many subjects interesting not only to the lawyer, but to the antiquary, the historian, and the moralist; it is the study of the growth of an organic structure, providing the data for the truly philosophical historian. His next publication was his *Story of Nuncomar and the Impeachment of Sir Elijah Impey*, an episode in the great drama in which Warren Hastings was the leading figure. It is a destructive analysis of Macaulay's famous essay, and did good service to real history by showing once for all the ruthlessness and extravagance of Macaulay's audacious rhetoric.

At last, in January, 1879, came his appointment as a judge of the High Court of Justice, "the Jerusalem of the Judiciary," the natural and proper aim and the fitting reward of a lifetime of legal study and preparation. His judicial career ended with his resignation in consequence of ill-health in 1891, and he died in 1894, after a gradual weakening of both mental and physical powers. It was sad to see the man whose intellectual force kept pace with a great and vigorous body slowly losing power, and the end was a release from enforced idleness hard for him to bear. Even when he was in the full tide of successful work on the Bench, his old journalistic impulse stirred within him, and he contributed to the *Times* a series of caustic letters on Mr. Gladstone's Irish policy, from which he dissented with his whole strength. In these mature years he studied Spanish and read Cervantes, he mastered Italian and read Dante, and renewed his acquaintance, never a very intimate one, with the classics. He had a heavy blow in the death of his son, J. K. Stephen, whose career gave promise of great brilliancy, ending all too early in his thirty-third year. In this, as in all matters touching his home life, Mr. Leslie Stephen's biography of Sir J. F. Stephen is marked by a reticence that shows a profound respect for the sacredness of the family circle, while in his

criticism of his brother's literary work he speaks out plainly and strongly, thus lending greater weight to his account of it.

Much of the value of this *Life of Sir J. F. Stephen* is in showing that while he failed to secure the measure of success which his own honest ambition and the just estimate of his friends anticipated, yet he influenced other men in such a way as to make them strong and useful. His whole life was one of hard work, and he thoroughly enjoyed it for its own sake and not for any reward or honor that it might bring. His was a manly independence, of perhaps a little too rough a nature to commend him either to the people who had votes to give to a popular candidate for Parliament, or to the men in high office who had the power to give great places to those who served them with strong fidelity to party and unquestioning obedience. It was not in Stephen's nature to do this, — he thoughtfully reasoned out his own course in law, in politics, in theology, in metaphysics, and he was slow to change his views, but ready to confess his errors when he finally was convinced. Naturally such a man did not win university honors or gain a seat in Parliament or achieve great success at the Bar or popularity on the Bench, — indeed, he had for his personal comfort too little respect or regard for these or any conventional standards, — but he had a strong and manly nature, an intellectual superiority, an ambition to do good work, that made him a man of mark in his lifetime and that give his biography a special value of its own. Mr. Leslie Stephen's best qualities as a man of letters are shown in the capital way in which he has subordinated his own opinions and views of life, especially of intellectual life, in order to give to the world a clear and strong portrait of his brother, and we may be sure that his picture of Sir J. F. Stephen will be the one dearest to those who knew and loved the man, and to that larger circle of those who knew his work and respected its excellence.

J. G. ROSENGARTEN.

Wolfe. By A. G. BRADLEY. [*English Men of Action.*] (London and New York: Macmillan and Co. 1895. Pp. viii, 314.)

MR. BRADLEY has written an eminently readable book. The material for a biography of Wolfe is scanty, and already pretty well known through Wright's admirable *Life*. If we have now little that is new, the old story is retold with vigor and grace.

Wolfe's glory is the glory of one brilliant success, but he had the staying qualities of genius. Without money or powerful friends, he yet, even in Walpole's corrupt days, secured rapid promotion in the army by his own conspicuous merits. At twenty-two he was entrusted with the pacification of a whole district in Scotland. His genius was of the kind that takes infinite pains. His captains furnish him with an estimate of the characters of each of their men. Ill and worn-out at Quebec, he yet finds time and strength to visit two young subalterns lying ill on a transport.